

Thank you, Mr. Chair and members of the committee. I want to also thank sincerely everyone who has spent countless hours on not only this bill as well as the bill drafted in the Senate. This includes the bill sponsors, engaged members of the Colorado Water Congress, as well as those with CDPHE. There have been many days, hours and months spent with everyone working toward the right answer, and I thank all involved.

With all the progress made, I would like to propose 1 last amendment to improve the clarity of the bill. This would be to add 3 words to the bill to better align to previous Federal regulations.

The Recommended Amendment would be on Page 31, regarding Lines 22-26, This would be:

WATER-FILLED DEPRESSIONS CREATED IN UPLANDS INCIDENTAL TO MINING OR CONSTRUCTION ACTIVITY AND PITS EXCAVATED IN UPLANDS FOR THE PURPOSE OF OBTAINING FILL, SAND, OR GRAVEL UNLESS AND UNTIL THE CONSTRUCTION OR EXCAVATION OPERATION IS ABANDONED AND THE RESULTING WATER FEATURE CONSTITUTES A WETLAND.

Note: All page and line references are to the April 29, 2024 Engrossed version of the bill.

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STATE OF COLORADO
DEPARTMENT OF LAW

Attorney General Phil Weiser
Testimony on House Bill 24-1379
Before the Committee on Finance
Colorado Senate
- May 3, 2024 -

Chair Mullica and members of the Committee, thank you for this opportunity to testify today in favor of House Bill 24-1379 (“H.B. 24-1379”). This bill addresses a regulatory gap left in the wake of the United States Supreme Court’s *Sackett v. EPA* decision, a gap that is now up to the states and to Colorado to fill.

The *Sackett* decision shrinks the scope of federal jurisdiction under the Clean Water Act and eliminates federal permitting authority for discharges of dredge and fill material into many of Colorado’s wetlands and temporary streams. We fought hard against this gutting of the Clean Water Act, as it would leave Colorado unprotected against the undermining of our water quality. Notably, because Colorado had not created its own state permitting program, we were reliant on the federal program. Without it, critical infrastructure projects are now caught in regulatory limbo with no certainty as to whether they can proceed.

This bill creates a Colorado-crafted framework in which projects can move forward and important safeguards for protecting water quality remain in place. The bill provides for streamlined approval processes, Colorado-specific protections, and clear guidelines for which waters and projects are subject to regulation and which are exempt. Those exemptions include ones we called for at the federal level, including for agriculture. And it does so in ways that complement the federal program, which will continue to apply to projects under federal jurisdiction.

To implement this important bill, if enacted into law, it is important that the Department use robust stakeholder engagement, such as that used in developing CDPHE’s Direct Potable Reuse drinking water rule. Such a model will ensure that all affected stakeholders have meaningful input in crafting the program.

For this new program to be successful, it is also critical that it enable swift yet responsible approvals for projects to proceed. To that end, the bill allows projects subject to preconstruction notification to commence if the Water Quality Control Division does not object within 45 days of receiving notice. We expect many of the projects under a new state program could take advantage of this process. Other aspects of the bill also provide for a streamlined process, such as the clear list of statutory exemptions and exclusions that clarify which activities and waters do not require discharge authorizations at all.

The success of this program will also depend, in part, on adequate funding to ensure CDPHE has the resources and staff necessary to ensure this program functions efficiently and effectively, acting on permits in a timely manner. Importantly, the bill funds itself by allowing the Water Quality Control Commission to establish fees through a public rulemaking process.

Lastly, I am glad to report that our suggestions for an even more efficient and responsible implementation have been incorporated in recent amendments to the bill:

- First, for the interim period between enactment and completion of rules for the new program, we will authorize projects to proceed under the existing Army Corps nationwide and regional general permits and make clear that operating under those permits will comply with state requirements.
- Second, the bill further streamlines the permitting process by requiring CDPHE to fully process—while ensuring all necessary environmental safeguards—all permits, even for the most complex cases, within two years of receiving the completed application.
- Finally, to allow enough time for robust, transparent stakeholder engagement, the rulemaking deadline has been extended to December 2025. This will enable the type of stakeholder engagement I discussed above.

I appreciate the sponsors' willingness to work with us in making these refinements and am grateful for their leadership in bringing this critical legislation forward.

Thank you for the opportunity to submit testimony in support of HB 24-1379.

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Thank you for the opportunity to submit testimony in support of HB 24-1379.



COUNTY COMMISSIONERS

RE: Support for HB24-1379

Dear Speaker McCluskie, Representative McCormick, Senator Roberts, and esteemed members of the Colorado Legislature:

On behalf of the diverse constituents of Pitkin County, the Pitkin County Commissioners have recognized the cultural, environmental, and economic value of protecting state waters. We reach out to you to express full support for House Bill HB24-1379. This piece of legislation is the result of significant stakeholder work that included statewide governmental entities, conservation organizations, outdoor recreation groups, and wildlife advocacy organizations. This collaborative process has resulted in the bill before the 2024 Legislation for consideration.

As with many of Colorado's waterways, the headwaters of the Roaring Fork, Crystal, and Fryingpan Rivers are made up of smaller streams without year-round flow, often because they are under snowpack, or flow seasonally beneath the ground surface; not only recharging our perennial rivers, but also wetlands and wet meadows. Many of these areas are considered the 'non-navigable waterways' recently left without protections, yet they are critical to the iconic western rivers that are the backbone of the headwaters' region and the state's recreation, tourism and agricultural economies. The population centers and rural areas that depend upon clean water from protected wetlands in Colorado's headwaters include 40 million Americans who live downstream in the American West. Our lives depend on the quality of our water, and these headwater streams and wetlands are where it all starts.

As you are aware, a recent United States Supreme Court case (*Sackett v. EPA*, 2023) left Colorado's key streams, wetlands, and subsurface waters without protection from dredging and filling without a Federal 404 permit. This left Colorado's water resources unprotected from harm and exploitation. However, it provides the State of Colorado with a great opportunity to begin to fill gaps and establish safeguards toward fully protecting all state waters from unpermitted dredging and filling.

There are three primary reasons why Pitkin County supports HB24-1379:

First, HB24-1379 extends coverage to all "state waters" - some of which are no longer covered by federal protections. This is a simple approach to ensure protection of all of Colorado's state waters; perennial, intermittent, ephemeral, underground, and vital seasonal streams and wetlands. While these riparian and riverine areas may comprise a tiny percentage of Colorado's landscapes, they are vital to our very survival - and that of virtually all wildlife.

Second, HB24-1379 closely aligns with the Federal 404 permitting program. This alignment promotes consistency and coherence in regulatory efforts, offering a strong foundation for managing dredge and fill activities while minimizing regulatory complexities. This alignment extends to mirroring the federal exemption schedule and federal compensatory mitigation allowances.

Third, HB24-1379 proposes that dredge and fill permitting be housed within Colorado Department and Public Health and Environment (CDPHE) the Water Quality Control Division (WQCD), in line with existing permitting frameworks.



COUNTY COMMISSIONERS

Additionally, we are excited to support the amendment that establishes a Western Slope administrative office to ensure more local expertise and outreach in the creation, implementation, launch and continued success of this legislation.

We look forward to continuing our work with you toward the passage of HB24-1379. Protecting state waters throughout Pitkin County and our western slope watershed is of the utmost importance. For all Coloradans, state waters represent one of the wellsprings of our identity, history, resilience, and even our survival. This legislation presents an important opportunity to enhance the protection of Colorado's water resources for present and future generations. Water sustains life. We are strongly in support.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Poschman".

Greg Poschman
Chair
Pitkin County Board of Commissioners

A handwritten signature in black ink, appearing to read "W. Huber".

Wendy Huber
Chair
Pitkin County Healthy Rivers Board